

E-Mail Request for Emergency Relief

1. Case Number: 05-cv-872-SLR

2. Check the box that applies:

- ☒ Requesting a teleconference with the parties and the court
☐ Requesting an in-person conference with the parties and the court
☐ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request:

We represent Plaintiff and its counsel, J.R. Julian, Esq. in connection with the Defendants' Motions for Sanctions. The motions were filed May 11 after final judgment was entered by the Court on April 11 and closed by the Clerk on April 20. Because the Defendants' Motions were clearly untimely under the Third Circuit's supervisory rule established in *Pensiero v. Lingle*, 847 F.2d 90, 99 (3d Cir. 1988) (requiring "that all motions requesting Rule 11 sanctions be filed in the district court before the entry of a final judgment") and its progeny e.g. *Mellon Bank*, 951 F.3d 1399(3d Cir.1991) and because we have an extension to file responsive brief on the merits by June 23, we ask the Court to modify that schedule so briefing on the motions should be stayed pending this Court's determination of this dispositive issue. *Pensiero* applies to dismissal of a complaint, *Simmerman v. Corino* 27 F.3d 58 (3d Cir. 1994). Defendants in a footnote relied on 7th Cir law for timeliness without bringing to the Court's attention controlling and conflicting Third Circuit Precedent.

*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: P. Doran; M. Hood

5. Response of opposing counsel to this request:

Mr. Hood has not responded.
Mr. Doran wrote to us that he believes an e-mail request to Your Honor is an inappropriate method to communicate this issue and objects to the substance.

6. Name of local counsel making this request: Richard R. Wier, Jr.

7. Today's Date: June 16, 2006

For court use only:

☐ A teleconference will be held on _____ to be coordinated and
initiated by _____

☐ An in-person discovery conference will be held on: _____

☒ Other:

Either file a motion to stay or include timeliness arguments in its response; i.e. Court agrees with defendants.

Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: 05-cv-872-SLR

2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

This is not an emergency. Plaintiff seeks to discuss its argument that the Rule 11 Motion is untimely. Plaintiff may raise this in its response. In any event, the decisions cited by Mr. Scialpa were decided prior to the amendments to Rule 11, which now provides for prior notice of any potential filing of the Rule 11 Motion. The Third Circuit's supervisory rule was adopted before and did not contemplate these amendments. Moreover, the underlying rationale for the Third Circuit's prior rule -- the avoidance of multiple appeals -- has been eroded, as reflected by Dipaolo v. Moran, 407 F.3d 140 (3d Cir. 2005). In this case, defendants served their Rule 11 Motion on January 18, 2006, long before the dismissal of plaintiffs' Complaint.

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3. Name of local counsel submitting this response: Erin Edwards

4. Today's Date: 6/16/06
